In the High Court of Punjab and Haryana, Chandigarh

CWP No. 8501 of 1999

Date of Decision: October 23, 2006

Dr. (Mrs) S.L. Sud

…Petitioner

Versus

Union of India & others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. S.K. Sud, Advocate,
for the petitioner.

Mr. Manjeet Singh Guglani, Central Govt. Counsel,
for respondent Nos. 1 and 2.

Mr. Harish Rathee, Sr. DAG, Haryana,
for respondent No. 3.

JUDGMENT

M.M. KUMAR, J. (Oral)

This petition filed under Article 226 of the Constitution prays for issuance of direction to respondent Nos. 1 to 3 to enforce notification dated 24.12.1998 (P-1) issued by the University Grants Commission-respondent No. 2 (for brevity, 'the UGC') as a whole by raising the age of superannuation of teachers working in Government Colleges. A further prayer has been made for quashing notification dated 13.5.1999 (P-5) issued by the respondent State of Haryana

providing for the age of retirement of the lecturers working in the Government Colleges at the age of 58 years.

Brief facts of the case are that the petitioner who has been working as a Lecturer (College Cadre) in the respondent State of Haryana, had attained the age of superannuation of 58 years and retired as such on 30.6.1999. The claim of the petitioner is that the recommendations made by the UGC for raising the retirement age of lecturer in the colleges to 60 years must be implemented by the respondent. State of Haryana and, therefore, the notification issued by the respondent State dated 13.5.1999 (P-5) maintaining the age of superannuation at 58 years is liable to be set aside.

Mr. S.K. Sud, learned counsel for the petitioner has argued on the basis of the recommendations made by the UGC, vide its letter dated 24.12.1998 (P-1) that the universities and colleges must adopt the uniform standards with regard to pay scale, mode of recruitment and qualification of teaching staff at various level. In para 16 the question of superannuation and re-employment of teachers has also been referred to and the recommendations made are that the teachers are to retire at the age of 62 years leaving it open to the university to re-employ a teacher up to the age of 65 years. In para 16.2 the age of retirement for other employees in the university has also been specified. Learned counsel has then made a reference to certain other portions of the recommendations of the UGC and submitted that these recommendations are binding on the Central as well as the State Governments. The basis of his argument is that the education is a subject which figure in Entry 66 of Union List referred

in Article 246 of the Constitution. According to him, once such recommendations have been made, it must be considered as a Central Legislation binding on the State by virtue of Entry 66 of the Union List. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **State of Maharashtra v. Sant Dhyaneshwar Shikshan Shastra Mahavidyalaya, 2006 (3) RSJ 604**. He has also submitted that the respondent State Government has adopted the Scheme with regard to pay scale and the standard of education by passing the notification as per the recommendations made and once a part of the Scheme has been accepted then the respondent State was under obligation to accept the same as a whole. Another argument raised is that there is discrimination between the lecturers employed by the private aided colleges and the respondent State of Haryana. The private college lecturers are retired at the age of 60, who have been granted grant-in-aid to the extent of 95%, whereas the lecturers in Government Colleges are retired at the age of 58 years. Lastly, learned counsel made a reference to the recommendations made by the Rastogi Commission for enhancing the age of retirement.

Mr. Harish Rathee, learned State counsel has made a reference to the provisions of Rule 3.26 of the Civil Service Rules Volume-I and argued that the age of retirement for all public servants in the respondent State is 58 years and the recommendations made by the UGC after thorough consideration have been partially accepted as per the notification dated 13.5.1999 (P-5). The age of retirement has been maintained at 58 years. Learned counsel has further submitted

that lecturers working in the private colleges are not persons similarly situated to that of the petitioner as the lecturer working in the private colleges governed by a separate set of rules and, therefore, there cannot be any breach of equality clause if the conditions of service of both cadres are different.

Having heard learned counsel for the parties at some length, we are of the view that there is no merit in the instant petition. The founding fathers of our Constitution have kept in view the federal character of Indian Polity on account of diversity of our culture despite the fact that various common factors keep the whole nation in one bond. Accordingly Part XI of the Constitution has provided for distribution of legislative power (Chapter I). On a co-joint reading of Articles 245, 246 and 254 of the Constitution it becomes evident that Parliament has been clothed with the power to make laws for the whole or any part of the territory of India and the Legislature of a State can make laws for the whole or any part of the State. The powers of Parliament and State legislature have further been defined by introduction of three lists namely Union List, State List and Concurrent List in the Seventh Schedule. The Parliament enjoys exclusive powers to make laws with respect to any of the subjects enumerated in List I of Seventh Schedule of the Union List. The Parliament and Legislature of a State have also been given powers to frame laws with respect to any matters enumerated in the Concurrent List (Part III) but the laws framed by the Parliament are to prevail over the law framed by the State Government in case of any conflict between the two. In the present case, we are concerned with

Entry 66 of the Union List (List I of Seventh Schedule) which has referred to Article 246 of the Constitution. The afore-mentioned Entry is in the following terms:

> " 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

It is evident that Entry 66 deals only with co-ordination and determination of standards in institution for higher education or research and scientific and technical institutions. It does not deal with the age of superannuation or the question of pay scale. The notification issued by the UGC titled as "The Notification on Revision of Pay Scales Minimum qualifications for Appointment of Teachers in Universities and Colleges and other measures for the Maintenance of Standards, 1998 (Annexure P.1) could be held to be binding on the State Government only to the extent of maintaining minimum qualifications for appointment of teachers in the Universities and other institutions but not in respect of matters concerning the age of superannuation or even pay scales. In those respect, the view of the State Government is to prevail. Therefore, on the basis of the provisions contained in Articles 245, 246 and 254 read with Entry 66 it is well nigh impossible to come to the conclusion that the notification (Annexure P.1), as referred to above, would be binding on the State Government.

The decision of the State Government dated 13.5.1999 (Annexure P.5) is discernible from para 19 under the heading 'age of superannuation' which reads as under:

> " The age of superannuation will remain unchaged and teachers working in Govt. Colleges will continue to retire on attaining the age of 58 years and the teaching personnel working in private affiliated colleges and universities will continue to retire on attaining the age of 60 years."

It would also be pertinent to mention that reliance has been rightly placed by respondents on the decision of the Union Government dated 21.12.1998 (Annexure R.1) which was communicated to the respondent-State of Haryana by the Ministry of Human Resource Development, Department of Home, Government of India and the same is reproduced hereunder for facility of reference:

> " Please find enclosed a copy of the CWP No. 17943 of 1998 filed by Shri Rajeshwar Aggarwal, Principal, Indira Gandhi National College, Ladwa, District Kurukshetra v. State of Haryana and ors. in the High Court of Punjab and Haryana at Chandigarh regarding revision of pay scales w.e.f. 1.1.1996 and enhanced age of superannuation from 60 to 62 years.
>
> In this regard, I would like to inform you that the Central Government has since enhanced the age of superannuation of teachers in the Central Universities vide its letter dated 27.7.1998 (copy enclosed). A decision about the age of superannuation of teachers in the State Universities and Colleges is required to be taken by the concerned State Government. The order

dated 27.7.1998 issued by the Central Government is not meant for them. In view of this, we have already requested the State Governments to issue appropriate orders regarding the revision of pay scales of teachers in the State Universities and Colleges since appropriate orders are required to be issued by the Government of Haryana in this case, it is requested that the case may be defended by the State Government on behalf of the Central Government as well and we may be informed of the progress in this case from time to time."

It was in this context that a Division Bench of this Court also considered the afore-mentioned controversy in CWP No.4124 of 1999 decided on 31.3.1999 (Prof. Lakhmir Singh v. UOI and others). Placing reliance on a judgement of Hon'ble the Supreme Court in Civil Appeal Nos. 4053-4054 of 1998 (Director of Public Instructions, Punjab v. Mahesh Chander and others) decided on 14.8.1998 their Lordships have held as under:

" After hearing the learned counsel for the parties we are of the view that there is no merit in these writ petitions. The circular issued by the Ministry cannot be said to be, in any manner, covered by Entry 66. According to us, the question of pay scales and the question of the age of superannuation cannot be said to be covered by the said entry. We are here only concerned with the fixing of the age of superannuation. It is upto the State Government/ University to adopt the

recommendations in toto or partially depending upon the state of affairs in a particular State/ University. In Mahesh Chander's case (supra), the UGC had issued guidelines that for the purpose of grant of selection grade/ senior scale, under the career advancement scheme for lecturers, the service rendered by a particular Lecturer in a Private College before joining Government College/ a Department of University or a college run by the University was to be counted for making up particular number of years of service required for grant of selection grade/ senior scale. The petitioners in those cases had joined Government Colleges after resigning from private colleges. This High Court held that the circular of the University was binding on the Colleges and the previous service rendered in the private colleges had to be counted for the purpose of senior scale/ selection grade. The apex Court while reversing the judgement has held that the circular of the UGC had only been adopted by the University and not by the Government and, therefore, the petitioners on joining Government Colleges were not entitled to count their previous service rendered in the private college for purpose of grant of senior scale/selection grade."

The Supreme Court in Mahesh Chander's case (supra) has taken the view that the notifications issued by the UGC which involves financial burden on the State exchequer cannot be ipso facto

applied unless such notifications are specifically adopted and accepted by the concerned State Government. It was in this context that the following observations made made in Mahesh Chander's case (supra):

> " In paragraph 8 of the affidavit, it has been categorically stated that the clarification issued by the University Grants Commission dated 27th November, 1990 has to be considered (sic.) by the State Government for its implementation as the clarification issued by the University Grants Commission involves a financial burden on the State exchequer. The concurrence of the State for its implementation has to be sought. Since State concurrence has not yet been given, the High Court was not right in granting to the respondents the benefit of the University Grants Commission letter dated 27.11.1990. The appeals are, therefore, allowed and the impugned judgement and order of the High Court is set aside. The writ petition filed before the High Court is dismissed."

In view of the above discussion, the argument of the learned counsel for the petitioner that the recommendations of the UGC are binding on the State Government is liable to be outrightly rejected because UGC in its recommendation itself has left it to the State Government to adopt the Scheme to the extent possible.

The reliance of the petitioner on the judgement of Hon'ble the Supreme Court in the case of Sant Dhyaneshwar Shikshan Shastra Mahavidyalaya (supra) is completely misplaced as

the observations made by their Lordships' are not applicable to the facts of the present case for the reason that no Legislation of the Central Government has been brought to our notice which might have been encroached upon by the Legislation framed by the State Government. Therefore, there is no substance in the argument raised by the learned counsel. Even the other argument that there is discrimination between the lecturers working in the private colleges who are retired at the age of 60 years and the lecturers working in Government Colleges who are retired at the age of 58 years has failed to impress us because both the services are regulated by different set of rules and the service conditions are wholly incomparable. It is well settled that the lecturers working the private colleges are not entitled to any allowance which are given to the lecturers working in the Government Colleges. The last argument of the learned counsel that recommendations have been made by the Rastogi Commission does not require to be dealt with in detail because the recommendations have never been adopted and the respondent State of Haryana vide notification dated 13.5.1999 (P-5) has scanned through the recommendations and have adopted a part of the recommendations without adopting the recommendation with regard to age of superannuation.

We are further of the view that the State Governments are within their competence to alter the condition of service of its employees, reduced the age of superannuation by fixing the date of superannuation and such action would not be violative of Article 311 of the Constitution. For the afore-mentioned proposition reliance may

be placed on a judgement of Hon'ble the Supreme Court in the cases of N.Lakshmana Rao and others v. State of Karnataka and others (1976)2 SCC 502 and K**. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 551.**

For the reasons mentioned above, this petition fails and the same is dismissed. However, there shall be no order as to costs.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

October 23, 2006
Pkapoor/okg